

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

DON JUAN STAPLES, BEY,

Plaintiff,

v.

CIVIL ACTION NO. 2:23-cv-00400

H. CHILDRESS, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

On May 22, 2023, the Plaintiff, proceeding *pro se*, filed his Complaint (Document 1) in this matter. Pending are the *City of Charleston Defendants' Motion to Dismiss* (Document 10) and the *Defendant Emmett C. Petry and Copley Garage, Inc's Motion to Dismiss Plaintiff's Complaint* (Document 16).

By *Administrative Order* (Document 2) entered on May 23, 2023, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On August 17, 2023, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 27) wherein it is recommended that this Court grant the *City of Charleston Defendants' Motion to Dismiss* (Document 10), grant the *Defendant Emmett C. Petry and Copley Garage, Inc's Motion to Dismiss Plaintiff's Complaint* (Document 16), and dismiss the Plaintiff's Complaint


(Document 1) with prejudice. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by September 5, 2023.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *City of Charleston Defendants' Motion to Dismiss* (Document 10) be **GRANTED**, the *Defendant Emmett C. Petry and Copley Garage, Inc's Motion to Dismiss Plaintiff's Complaint* (Document 16) be **GRANTED**, the Plaintiff's Complaint (Document 1) be **DISMISSED WITH PREJUDICE**, and this case be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: September 12, 2023

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA